

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT KNOXVILLE

JANUARY 1999 SESSION

<p><b>FILED</b></p> <p><b>March 12, 1999</b></p> <p><b>Cecil Crowson, Jr.</b> Appellate Court Clerk</p>
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BRANDON A. MILLER,  
 Defendant/Appellant  
 v.  
 STATE OF TENNESSEE,  
 Appellee

) C.C.A. NO. 03C01-9803-CR-00102  
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 )  
 ) McMINN COUNTY  
 )  
 )  
 ) HON. R. STEVEN BEBB, JUDGE  
 )  
 ) (Post-conviction relief)

FOR THE APPELLANT:

Brandon A. Miller  
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 Petros, TN 37845

FOR THE APPELLEE:

John Knox Walkup  
 Attorney General & Reporter

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OPINION FILED \_\_\_\_\_

AFFIRMED  
 JOHN K. BYERS  
 SENIOR JUDGE

## OPINION

The trial court dismissed the defendant's petition for post-conviction relief because it was barred by the statute of limitations.

We affirm the judgment of the trial court.

The defendant pled guilty to several offenses in July and November of 1993. On June 20, 1996, the defendant filed a petition for post-conviction relief.

At the time of the defendant's convictions, the applicable statute of limitations was three years. Tenn. Code Ann. § 40-30-102 (Repealed 1995). In 1995, the applicable statute of limitations was reduced to one year. Tenn. Code Ann. § 40-30-202(a).

At the time of the adoption of Tenn. Code Ann. § 40-30-202(a), the defendant's right to file a petition for post-conviction relief had not expired. Therefore, his right to file a petition was not terminated by the reduction of the limitation period from three years to one year. Under the holding in the case of *Carter v. State*, 952 S.W.2d 417 (Tenn. 1997), the defendant had one year from the date of the adoption of the statute fixing the limitation at one year to file a petition. That would allow him to file a timely petition on or before May 10, 1996.

The defendant filed his petition on June 20, 1996. This was beyond the one year period and the defendant did not show there was any exception for not applying the one year limitation in this case.

The trial judge properly dismissed the petition.

The judgment of the trial court is affirmed. It appearing that the defendant is indigent, costs of the appeal are taxed to the State.

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John K. Byers, Senior Judge

CONCUR:

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James Curwood Witt, Jr., Judge

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Norma McGee Ogle, Judge